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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B5

[redacted]

DATE: JUL 18 2011 OFFICE: NEBRASKA SERVICE CENTER [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a telecommunications business. It seeks to employ the beneficiary permanently in the United States as [redacted] section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, a Form ETA 750,[1] Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not qualify for the second preference classification. Specifically, the director determined that the beneficiary did not possess a four-year bachelor's degree in computer science or information systems.

On appeal, counsel submits a brief and additional evidence. Counsel asserts that the beneficiary possesses a foreign equivalent degree to a U.S. bachelor's degree. As will be discussed below, counsel relies on credentials evaluations from four separate sources and urges U.S. Citizenship and Immigration Services (USCIS) not to rely upon the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) when analyzing the beneficiary's educational background. Counsel states that no authority has accredited EDGE as the definitive source for foreign degree evaluations. Upon reviewing the record as a whole, the AAO concurs with the director's conclusion that the beneficiary's education and work experience cannot support classification as a member of the professions holding an advanced degree, the only classification before the AAO in this matter. Thus, the AAO will uphold the director's decision.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The beneficiary [redacted] The beneficiary also has over ten years of documented progressive employment experience in the profession obtained before the priority date [redacted] date in which the petitioner filed the alien employment certification with the DOL. 8 C.F.R. § 204.5(d). Prior to his university study, the beneficiary completed a two-year postsecondary educational program. The beneficiary obtained a matriculation exemption and did not need to take an exam required for some students prior to starting university study. Counsel asserts that the beneficiary completed the equivalent of one year of university level study as part of this two-

[1] After March 28, 2005, the correct form to apply for alien employment certification is the Form ETA 9089.

year post secondary program. The issue in this case is whether the beneficiary's post secondary education, if any, and three-year Bachelor of Science degree constitute a foreign degree equivalent to a U.S. baccalaureate degree.

Eligibility for the Classification Sought

As noted above, DOL certified the Form ETA 750 in this matter. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified, and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference immigrant visas. The AAO must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S.

575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). In fact, the Senate Conference Report for the Act presumes that a baccalaureate is a "4-year course of undergraduate study." S. Rep. No. 101-55 at 20 (1989). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus the requisite five years of progressive post baccalaureate experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus the requisite five years of progressive experience in the specialty). 8 C.F.R. § 204.5(k)(2).

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[2] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

The degree must also be from a college or university. Specifically, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction).

Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991). *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

The director stated in his decision that he had consulted EDGE and that EDGE indicates that a senior certificate with a matriculation exemption represents attainment of a level of education comparable to completion of senior high school in the United States. The director further stated that EDGE indicates a three-year Bachelor of Science in South Africa is equivalent to three years of university study in the United States. On appeal, counsel urges USCIS not to rely upon EDGE when analyzing the beneficiary's educational background.

Counsel further states that EDGE has not been established through any particular accreditation to be the definitive source for foreign degree evaluations. According to its website, AACRAO, which created EDGE is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions and agencies in the United States and in over 40 countries." *See* http://www.aacrao.org/About-AACRAO.aspx (accessed July 15, 2011 and incorporated into the record of proceeding). Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D. Minn. March 27, 2009), a federal district court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision.

According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO.

[redacted]

http://aacraoedge.aacrao.org/index.php (accessed July 15, 2011 and incorporated into the record of proceeding). In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), a federal district court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), a federal district court upheld a USCIS conclusion that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience. The reasoning in these decisions is persuasive.

The AAO disagrees with counsel's assertion that EDGE's lack of "accreditation" is relevant. The content listed within EDGE's website is peer reviewed. Counsel has not provided any examples of other accredited evaluation tools nor any description of how such a tool might be accredited. Counsel does not identify an entity that exists to provide such accreditation to organizations like AACRAO or evaluation tools like EDGE. Thus, counsel has failed to explain why the issue of whether EDGE is accredited or not is relevant to the matter at hand.

In the section related to the South African educational system, EDGE provides that a Bachelor of Science degree is three years in duration and represents attainment of a level of education comparable to three years of university study in the United States.[3] This information is inconsistent with the credentials evaluations that counsel submitted.

Counsel has submitted evaluations from four separate sources. Each evaluation concludes that the beneficiary possesses the equivalent of a U.S. Bachelor of Science degree with a dual major in computer science and mathematics.

Counsel submitted an evaluation from Barry Silberzweig of the Trustforte Corporation dated November 20, 2000. Mr. Silberzweig indicates that he is a member of AACRAO and lists the *International Academic Credentials Handbook, Volume I* (1988) by AACRAO and NAFSA as one of his references. He states that he bases his analysis on the beneficiary's transcript, the beneficiary's Bachelor of Science program's reputation, the number of years of required study, the nature of the beneficiary's courses, the beneficiary's grades, and the required hours of coursework.

[redacted] further states that the beneficiary "completed both the general studies and specialized studies" leading to his baccalaureate and that the general courses included "entry-level courses in English [and] the social sciences." The AAO has reviewed the beneficiary's transcript from the [redacted] The beneficiary's transcript notably lists no such courses in English

[3] The AAO notes that EDGE indicates that primary, junior secondary and senior secondary school total 12 years only. Students then take a compulsory senior certificate examination. The beneficiary received an examination exemption.

or social studies. Accordingly, [redacted] evaluation lacks credibility due to this material misrepresentation that he has made regarding the beneficiary's prior coursework.

Counsel submitted two evaluation letters from [redacted] respectively. [redacted] states that he bases his evaluations on the nature of the beneficiary's courses, the credit hours involved, the reputation of the beneficiary's school, and the structure of the South African educational system. He states that U.S. universities would accept this degree as a full bachelor's degree for admission to graduate programs, and he explains that the beneficiary had a rigorous post secondary school experience, resulting in his receipt of the matriculation exemption and exemption from having to take an exam prior to entering the university.

[redacted] also states that EDGE is not the ultimate academic evaluation authority and that USCIS should consider relying on the opinions of the NAFSA Association of International Educators instead, which formed in 1948 and has approximately 10,000 international educators. Specifically, [redacted] states that NAFSA no longer provides rigid equivalency guidelines for admissions officers. In fact, [redacted] quotes [redacted] publication as providing: "Advice for admission officers' is intentionally not provided." As such, NAFSA does not issue peer reviewed placement recommendations or any placement recommendations at all. [redacted] therefore, has not sufficiently explained why this publication is useful support for his equivalency conclusions. Furthermore, [redacted] fails to provide copies of the relevant pages of the NAFSA material relating to South Africa. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

> It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

This evaluator cannot resolve inconsistencies regarding the equivalency of the beneficiary's academic background without objective evidence resolving the inconsistency in the petitioner's favor.

[redacted] also asserts that U.S. universities accept South African three-year degrees for entry into graduate programs. He provided website addresses from four U.S. universities to support his claim. By referencing these website addresses, [redacted] as effectively incorporated into the record of proceeding. Significantly, according to the websites, only two of the four universities explicitly allow South African three-year baccalaureate degrees for admission to a graduate program and one university expressly does not.

The website for the [redacted] specifically states that the school does accept South African degrees for entry into its Master's of business administration program. *See* http://www.stern.nyu.edu/AcademicPrograms/FullTime/Admissions/

ApplicationInstructions/Transcripts/index.htm#2 (accessed July 15, 2011 and incorporated into the record of proceeding).

The website for the Wharton School within the University of Pennsylvania states that the school accepts all three-year degrees for entry into its Master's of business administration program. *See* http://www.wharton.upenn.edu/mba/admissions/international-applicants.cfm#listA1 (accessed July 15, 2011 and incorporated into the record of proceeding).

The website for the California State University Chico, however, actually requires a "4-year university degree comparable to a U.S. bachelor's degree" for admission to a Master's degree program. *See* http://www.csuchico.edu/iss/prospective/qualifications.shtml (accessed July 15, 2011 and incorporated into the record of proceeding). This information contradicts the statements that Dr. Bellehsen made regarding California State University Chico's academic requirements for admission to its graduate programs.

The website for the Office of Graduate Studies within the University of California Davis does not mention South African degrees, although it does reference the British system. *See* http://gradstudies.ucdavis.edu/prospective/international.html (accessed July 15, 2011 and incorporated into the record of proceeding). Dr. Bellehsen stated in his first evaluation that the South African educational system is "closely analogous" to the British system. He asserts that a thirteen-year secondary education program is "common," but fails to provide any supporting documentation for that assertion. USCIS need not accept primarily conclusory assertions.[5]

Counsel also submitted two evaluation letters from [redacted] within the [redacted] respectively. [redacted] lists the *International Academic Credentials Handbook, Volume I* (1988) published by AACRAO as a reference but does not explain why AACRAO's more recent publications on foreign degrees, now in the form of EDGE, is not more persuasive. He also fails to provide copies of relevant pages from the handbook supporting his opinion.

[redacted]sserts that the beneficiary completed the equivalent of 4.5 U.S. credits for each of his bachelor of science classes and 30 U.S. credits for his one year of post secondary studies prior to starting at the university. [redacted] states that he bases his analysis on course hours and semester duration. He also focuses on the reputation of the University of Pretoria's program, the number of years of the program, the nature of the courses, the beneficiary's grades, and the estimated number of hours the beneficiary spent studying. [redacted] oncludes that the beneficiary completed the equivalent of 125 U.S. credits between his post secondary and university level study.

The beneficiary's transcript only lists the courses that he took and whether or not he passed them. The course credit hours are not listed. More significantly, the record does not include the

[5] *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

beneficiary's high school or other pre-university transcript that might support [redacted] assertions regarding the 30 credit hours he assigns to the beneficiary's matriculation exemption. Moreover, the beneficiary's University of Pretoria transcript does not list any transfer credits.

Counsel submitted an evaluation letter from [redacted] tates that admission into the University of Pretoria required completion of one year of college level studies in the higher stream of upper secondary study, which was two years beyond 10th grade. He equates the higher stream courses to advance placement courses in the United States. The record, however, also contains a letter from the [redacted] who states that the admission requirements for the beneficiary's program are only a grade 12 certification with matriculation exemption. [redacted] notes that EDGE does not make the distinction between the higher and standard streams of upper secondary study in South Africa. He asserts that EDGE's analysis of the senior certificate is an analysis of an academic achievement lower than what the beneficiary actually completed. [redacted] considers the beneficiary's post secondary studies and three-year Bachelor of Science degree to constitute a single source degree because the second course of study followed the first. At issue, however, is the equivalency of the beneficiary's ultimate degree, the three-year Bachelor of Science.

The AAO finds that the beneficiary possesses neither a four-year degree nor a degree from a shorter program that is equivalent to a bachelor of science because it builds upon a required level of prerequisite education. The petitioner has not established that the University of Pretoria requires one year of university level education prior to entry into its three-year bachelor of science in computer science program. The AAO notes that the petitioner submitted a letter from the University of Pretoria stating that a grade 12 certificate and matriculation exemption are the only academic requirements that are required for admission. There is no documentation within the record of proceeding, such as the beneficiary's high school or other pre-university transcript, to suggest that the matriculation exemption represents additional coursework beyond the 12th year of secondary education. The evaluators' attempts to combine undocumented pre-university education with the beneficiary's three-year Bachelor of Science degree are not persuasive.

The AAO notes that none of the four evaluators have provided any peer reviewed source to support their opinions. Additionally, the evaluators each go about finding that the beneficiary possessed the equivalent to a U.S. Bachelor of Science degree with a dual major in computer science and mathematics in inconsistent ways. [redacted] provides a very general analysis of the University of Pretoria's bachelor of science degree requirements, [redacted] asserts that USCIS should use NAFSA opinions rather than those of EDGE, Professor Appel instead seeks to assign credits to each of the courses that the beneficiary completed, and [redacted] ocuses on the beneficiary's receipt of the matriculation exemption and the fact that he studied within the higher stream of post secondary study in South Africa.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable,

USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm'r 1988).

[redacted]focus upon the beneficiary's rigorous, higher stream post-secondary studies prior to beginning his Bachelor of Science coursework. As stated above, the petitioner has failed to submit any of the beneficiary's transcripts or diplomas from his high school or post-secondary studies. The beneficiary's University of Pretoria transcript lists no transfer credits. Thus, the petitioner has not provided any substantive evidence regarding the beneficiary's higher stream post-secondary studies. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

[redacted]also state that certain U.S. universities accept three-year bachelor's degrees from countries such as South Africa as being the equivalent of U.S. bachelor's degrees. As discussed above, not all of the websites [redacted]lists support his assertion. Even if some universities accept South African three-year degrees for admission to graduate programs, the fact that certain U.S. universities may accept three-year foreign degrees for entry into a Master's degree program is not persuasive. Some of these universities may pose additional requirements. If three-year degrees were equivalent to four-year degrees in the United States, then all U.S. universities would accept them unconditionally for entry into Master's programs.

[redacted]dditionally equate the beneficiary's one year of pre-university study to one year's worth of university level transfer credits or Advanced Placement (AP) achievement in the United States. In this instance, though, the beneficiary's Bachelor of Science program was only three years in duration. Had it been normally a four-year program and had the beneficiary completed it in three years due to his previously received college level credits, then perhaps counsel's argument would be more persuasive.

According to the letter from the Dean of the University of Pretoria's Bachelor of Science degree in computer science does not require one year of college credit for entry. This program is a three-year program, which was not accelerated for the beneficiary based on his previous educational credits nor was it predicated on the completion of a prior year of college level education. As stated above, the record lacks the beneficiary's high school or other pre-university transcript and the University of Pretoria transcript lists no transfer credits. Even if the beneficiary had entered this Bachelor of Science program with a year of college level education, such education would not have been required for entry into this three-year program. If the equivalency of this degree depends on earlier education not required for entry into the program, two individuals completing this Bachelor of Science degree program could possess two different degrees depending on what education they had when they entered the program. Following such logic, if an individual in the United States obtains an associate's degree and then a full four-year bachelor's degree, that individual would have something more than a bachelor's degree such as a Master's degree. That result is untenable.

Rather, as in the case at hand, the final degree is the same for all graduates regardless of whether or not they came into the program with extra prior education.

Because the beneficiary has neither (1) a U.S. degree above a baccalaureate or a foreign equivalent degree nor (2) a U.S. baccalaureate degree or foreign equivalent degree in computer science or information systems and five years of progressive experience in the specialty, he does not qualify for preference visa classification as an advanced degree professional under section 203(b)(2) of the Act.

Qualifications for the Job Offered

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu,* 736 F. 2d at 1309.

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien employment certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

> ***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in

> training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the alien employment certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in an alien employment certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the alien employment certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the alien employment certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the alien employment certification.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the alien employment certification reflects the following requirements:

> Block 14:
>
> Education: 4-year bachelor's degree in computer science or information systems
>
> Experience: 5 years in the job offered or 5 years in the related occupations of project manager, infrastructure and capacity planner, programmer, or senior programmer
>
> Block 15: Experience must involve IT planning and operations support for telecommunications operations support systems; computer capacity and configuration for Unix systems; system configuration for HP, Sun, and Microsoft servers; and IT financial planning including hardware/software acquisition and parameters of overall cost of ownership models.

The beneficiary possesses a three-year bachelor of science degree from the [redacted] Prior to starting at the [redacted] the beneficiary received a matriculation exemption, which counsel asserts represents one year of study at the university level. For the reasons stated above, counsel's assertions are not persuasive. Thus, the

beneficiary does not have the "4-year bachelor's degree" required for the job as specified on the alien employment certification.

The beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. In addition, the beneficiary does not meet the job requirements on the alien employment certification. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.